United Nations CAT/C/DNK/CO/6-7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined sixth and seventh periodic reports of Denmark*

1. The Committee against Torture considered the combined sixth and seventh periodic reports of Denmark (CAT/C/DNK/6-7) at its 1366th and 1369th meetings (see CAT/C/SR.1366 and CAT/C/SR.1369), held on 16 and 17 November 2015, and adopted the present concluding observations at its 1386th meeting, held on 30 November 2015.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its combined sixth and seventh periodic reports under it, as it improves the cooperation between the State party and the Committee, and focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee appreciates the quality of its dialogue with the State party's large high-level multisectoral delegation, and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee appreciates the State party's continued leading role in the promotion of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — including through its sponsorship of the General Assembly omnibus resolution on torture and cruel, inhuman and degrading treatment or punishment — and its support to the Convention against Torture Initiative.

5. The Committee welcomes the State party's accession to and ratification of the following international and regional instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 24 July 2009 and 23 September 2014, respectively;

(b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 7 October 2015;

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

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(c) The Council of Europe Convention on Action against Trafficking in Human Beings, on 19 September 2007.

6. The Committee notes with appreciation the legislative measures taken by the State party, including:

(a) The adoption of amendments to the Criminal Code and the Military Criminal Code lifting the statute of limitations on violations committed by the use of torture, including attempts and complicity, in criminal cases;

(b) The designation in 2007 of the Parliamentary Ombudsman as a national preventive mechanism under the Optional Protocol to the Convention against Torture;

(c) Amendment to the Ombudsman Act extending the jurisdiction of the Parliamentary Ombudsman to institutions responsible for the care of children, and all private institutions hosting persons deprived of their liberty or where individuals are placed in pursuance of a decision or recommendation made by a public authority, or with its consent or approval;

(d) The Adoption of a new Administration of Justice Act and Criminal Code for Greenland in 2008.

7. The Committee welcomes the numerous administrative and other measures taken in areas of relevance to the Convention against Torture, including:

(a) The implementation, since 2002, of successive national action plans to combat human trafficking;

(b) The strengthening of the capacity of the Danish Institute for Human Rights and the extension of its mandate to cover Greenland;

(c) The issuance by the Danish Armed Forces of a new directive on detainees, complementing mission specific directives, with a view to improving the handling of detainees in military operations abroad.

8. The Committee notes with appreciation the implementation by the State party of recommendations made in cases considered under the complaints procedure.

9. The Committee welcomes the positive implementation of previous recommendations (CAT/C/DNK/CO/5) under the follow-up procedure, which has led to:

(a) The revision and improvement of educational training programmes for the police on the use of force;

(b) The adoption of guidelines on the use of administrative detentions under the Police Act and the management of large crowds;

(c) The entry into operation of the Independent Police Complaints Authority in 2012 and the decision to affix individual identity numbers on police uniforms as of February 2016.

C. Principal subjects of concern and recommendations

Torture as an offence

10. While welcoming the incorporation of the definition of torture into Section 157a of the Penal Code and Section 27A of the Military Criminal Code, the Committee regrets the decision of the State party only to qualify torture as an aggravating circumstance for the determination of a sentence rather than establish it as a distinct offence (arts. 1 and 4).

11. **The Committee reiterates its previous recommendation to make torture a punishable offence per se. Drawing the attention of the State party to general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee recalls that, by naming the offence of torture as distinct from other crimes, States parties will directly advance the overarching aim of preventing torture and ill-treatment by, inter alia, alerting everyone — including perpetrators, victims, and the public — to the special gravity of the crime of torture; strengthening the deterrent effect of the prohibition itself; and enhancing the ability of responsible officials to track the specific crime of torture.**

Incorporation of the Convention in domestic law

12. The Committee appreciates the affirmation by the delegation of the State party that the Convention is a source of law. Nonetheless, it remains concerned that as the Convention has not been incorporated in domestic law, it may not be used in courts as a basis for a case. The Committee also notes that the State party intends to start a process to reconsider the matter.

13. **The Committee reiterates its previous recommendation to incorporate the Convention into Danish law so that it can be invoked directly in courts.**

Fundamental safeguards

14. The Committee is concerned at reports, as referred to in the 2014 Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2014) 25), of instances where the fundamental legal safeguards provided for by the State party's laws and regulations have not been afforded to individuals from the outset of deprivation of liberty (art. 2).

15. **The State party should ensure that the fundamental legal safeguards are diligently respected in all cases upon arrest: the right of individuals to be informed of their rights, to receive independent legal assistance promptly, to receive medical assistance, and to contact relatives. The State party should put into place mechanisms for monitoring and keeping records of compliance with relevant regulations thereon.**

Statute of limitations in civil proceedings

16. The Committee values the fact that, since 2008, there has been no statute of limitations for torture in the Penal Code. However, it is concerned that, as civil compensation may be adjudicated independently of criminal proceedings in the State party, the one-year rule introduced in 2007 on civil claims subsequent to criminal convictions may not be applicable to all civil proceedings.

17. **Recalling the continuous nature of the effects of torture and that, for many victims, passage of time does not attenuate the harm, the Committee recommends that the State party take the necessary legal measures to ensure that civil proceedings related to torture and ill-treatment are not subject to statutes of limitations, which could deprive victims of the redress, compensation and rehabilitation due to them, as referred to in paragraph 40 of the Committee's general comment No. 3 (2012).**

Transfer of detainees in armed operations abroad

18. The Committee is concerned that the mandate of the Commission of Inquiry on the Danish participation in the wars in Iraq and Afghanistan – set up, inter alia, to investigate circumstances of the transfer of prisoners by the Danish contingent of the International Security Assistance Force to the custody of other States' forces – was terminated without

having made definite conclusions as to whether there had been breaches of international obligation by the State party not to expose those prisoners to ill-treatment. The Committee also notes that examination by the Military Prosecution Service is under way with a view to assessing whether information on the transfer of detainees in Iraq can form the basis of criminal investigation (arts. 3 and 10).

19. **The State party should ensure that (a) investigations on the transfer of prisoners to the custody of other States' forces in its military operations abroad are undertaken to completion by an independent body, and made public; and (b) if a violation of article 3 of the Convention is established, those responsible are appropriately prosecuted and victims are entitled to obtain redress.**

Deportation of vulnerable individuals

20. The Committee is concerned that a minor, accompanied by his adult brother, was deported from Denmark to Afghanistan in December 2014 after the brothers' request for asylum had failed, without any measure of protection, and that the minor was reported killed upon return to his country of origin (arts. 3 and 10).

21. **The State party should put into place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation, even in cases where return is voluntary, and act upon reports of torture and ill-treatment, including for the purpose of informing its asylum policies.**

Screening of and assistance to asylum seekers who are victims of torture

22. The Committee is concerned at the lack of a regular mechanism for the identification of victims of torture throughout the asylum process. Moreover, the Committee is concerned that intake procedures at the Ellebæk Prison for Asylum Seekers and Others Deprived of their Liberty (Ellebæk Prison), where decisions on fitness of asylum seekers for detention and identification of victims of torture are made by a nurse, are inadequate. It is also concerned at the lack of a system for handling victims of torture upon their identification during administrative detention (arts. 3, 13 and 14).

23. **The State party should (a) put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at reception centres and places of detention such as the Ellebæk Prison; and (b) ensure that victims of torture are not held in places of deprivation of liberty and have prompt access to rehabilitation services.**

Detention of asylum seekers

24. The Committee regrets that the State party considers prison-like structural layout and fixtures at the Ellebæk Prison as necessary for security reasons. The Committee also finds excessive the total length of detention of asylum seekers of 18 months authorized by article 37 of the Aliens Act. (arts. 11 and 16).

25. **The State party should:**

(a) **Reduce the length of administrative detention of asylum seekers authorized under the Aliens Act for as short a period as possible, bearing in mind that detention should be used as a measure of last resort;**

(b) **Ensure that facilities accommodating asylum seekers are appropriate for their status and situations, especially as some of them may be victims of torture or ill-treatment. As such, the State party should alter layout and fixtures so as to change the carceral appearance of facilities hosting asylum seekers.**

Advertisement placed in foreign newspapers

26. The Committee notes that advertisements informing, among others, of cuts of benefits for refugees has been placed in foreign newspapers with a view to discouraging smuggling and immigration into the State party. The Committee also notes that a review of the measure by the Parliamentary Ombudsman is under way (art. 3).

27. **The State party should ensure that measures aimed at preventing smuggling and discouraging immigration should not deflect it from its obligations under article 3. In this regard, it should ensure that such a measure is not construed as dissuasive by individuals in need of and seeking protection by the State party.**

Tolerated stay

28. While noting that, in accordance with the procedure of tolerated stay, individuals in danger of being subjected to torture and ill-treatment if deported or expulsed are allowed to remain in the State party, the Committee is concerned at the regime of control and limitation of rights to which such individuals are subject, especially as they may be in such status for long periods of time (arts. 3 and 16).

29. **The State party should introduce more detailed regulation of the conditions and rights of foreigners on tolerated stay.**

Use of pepper spray

30. While noting that the use of pepper spray is regulated and has diminished, the Committee is concerned at reports of its still fairly frequent use by the police and in prisons (art. 16).

31. **The State party should take measures to further restrict the use of pepper spray, and prohibit its use in confined spaces, on persons with mental disabilities or on individuals who have been brought under control.**

Solitary confinement

32. While welcoming the significant decline in the use of solitary confinement during pretrial detention since 2000, the Committee is concerned that the Danish Administration of Justice Act allows the placement of remand prisoners in solitary confinement for up to eight weeks for adults and four weeks for minors. The Committee is also concerned at the use of solitary confinement as a disciplinary measure for convicts, which may be enforced for a continued period of up to 28 days. Furthermore, the Committee is concerned at the application of a regime of voluntary exclusion from association for detainees for their own protection (arts. 2, 11 and 16).

33. **The State party should bring its legislation and practice on solitary confinement into line with international standards, by:**

(a) **Abolishing solitary confinement of minors and as a disciplinary measure in law;**

(b) **Further restricting, in accordance with international standards, the conditions and the length under which solitary confinement during pretrial detention is permitted in the interest of criminal investigations;**

(c) **Limiting the length of permissible solitary confinement to a maximum of 15 days;**

(d) **Abolishing the practice of voluntary exclusion from association and putting into place mechanisms for the immediate removal and relocation of detainees who fear for their own safety.**

Conditions of detention of minors and women

34. The Committee notes that very few juvenile offenders are placed in a carceral environment. It also notes that their best interest and safety prevail when placed with adults, and due consideration is given to the selection of co-detainees with whom they are in contact. Moreover, the Committee notes that women are detained in mixed gender prisons and that protection measures are in place to reduce the risk of abuse and exploitation (art. 16).

35. **The State party should be attentive that measures in place continue to protect minors placed with adults, and women in mixed gender prisons, against abuse and exploitation. The Committee encourages the State party to undertake a study on both regimes, identifying the advantages and risks, as well as the impact on minors and women's reintegration in society after their release from prison.**

Separation of convicts and remand prisoners

36. The Committee is concerned that occasionally convicts serving short sentences are placed in remand prisons (art. 16).

37. **The State party should cease the practice of placing convicted persons with pretrial detainees.**

Obligation to report torture

38. The Committee is concerned that medical professionals' obligation of confidentiality trumps the need to report torture and ill-treatment uncovered during visits of places of detention in the State party (art. 12).

39. **The State party should:**

(a) **Establish an obligation for medical professionals to report torture and ill-treatment of individuals deprived of their liberty, and to seek, whenever possible, victims' consent for the use or disclosure of such information;**

(b) **Put in place adequate channels for directing and handling such reports, taking into account the utmost importance of ensuring the safety of victims.**

Coercive measures in psychiatric institutions

40. The Committee is concerned at the frequent recourse to coercive measures, often accompanied by immobilization of patients, in psychiatric institutions, in spite of the fact that the Psychiatric Act stipulates that they should be used as a last resort (art. 16).

41. **The State party should:**

(a) **Ensure that every competent mental health patient, whether voluntary or involuntary, is fully informed about the treatment to be prescribed, and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law;**

(b) **Revise and tighten regulations with clear and detailed guidance on the exceptional circumstances where the use of restraints may be allowed, with a view to considerably decreasing the recourse thereto in mental health care.**

Intersex persons

42. While taking note of the information provided by the delegation on the decision-making process related to treatment of intersex children, the Committee remains concerned at reports of unnecessary and irreversible surgery and other medical treatment with lifelong consequences to which intersex children have been subjected before the age of 15, when their informed consent is required. The Committee is further concerned at hurdles faced by these persons when seeking redress and compensation in such cases (arts. 14 and 16).

43. **The State party should:**

(a) **Take the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and ensure that no one is subjected during infancy or childhood to unnecessary medical or surgical procedures;**

(b) **Guarantee counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary surgery and other medical treatment;**

(c) **Ensure that full, free and informed consent is respected in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent;**

(d) **Provide adequate redress for the physical and psychological suffering caused by such practices to intersex persons.**

Gender-based violence

44. While welcoming the implementation of several action plans to combat violence against women, the Committee remains concerned that numerous women in the State party have experienced violence or have been exposed to threats thereof, and that the rates of prosecution and conviction remain low (arts. 2, 12, 13 and 16).

45. **The State party should assess the effectiveness of action plans in combatting violence against women and address obstacles to the effective prosecution of acts of violence against women so that the judicial remedy is increasingly sought and used successfully.**

Training

46. While noting the training courses delivered by the Red Cross, the Committee is concerned that the coverage of the issue of torture is elementary in the training programme for medical professionals in the State party. The Committee also regrets the lack of information on the assessment of effectiveness of torture-related training programmes in reducing the occurrence of torture and ill-treatment (arts. 10 and 16).

47. **The State party should:**

(a) **Enhance the content of torture-related courses in the curricula of medical students, such as on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) and on the care for victims of torture;**

(b) **Assess the effectiveness of training programmes, such as those for law enforcement officers, in reducing incidents of torture and ill-treatment.**

Data collection

48. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, including in detention facilities. The Committee also notes that the State party, through the Independent Police Complaints Authority, intends to collect data on complaints against the Police (arts. 2, 12, 13, 14 and 16).

49. **The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, in particular in detention facilities, as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

Follow-up procedure

50. **The Committee requests the State party to provide, by 9 December 2016, follow-up information in response to the Committee's recommendations relating to: the incorporation of the Convention in domestic law; the deportation of vulnerable individuals; the screening of and assistance to asylum seekers who are victims of torture; and separation of convicts and remand prisoners, as contained in paragraphs 13, 21, 23 and 37, respectively, of the present document.**

Other issues

51. **The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the International Convention for the Protection of All Persons against Enforced Disappearance.**

52. **The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages through official websites, the media and non-governmental organizations.**

53. **The State party is invited to submit its next report, which will be the eighth periodic report, by 9 December 2019. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.**